

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BALLARD RURAL TELEPHONE	)	
COOPERATIVE CORPORATION, INC., ET AL.	)	
	)	
COMPLAINANTS	)	
	)	
V.	)	
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
D/B/A AT&T KENTUCKY	)	
	)	
DEFENDANT	)	
	)	CASE NO.
AND	)	2011-00199
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
D/B/A AT&T KENTUCKY	)	
	)	
THIRD-PARTY COMPLAINANT	)	
	)	
V.	)	
	)	
HALO WIRELESS, INC.	)	
	)	
THIRD-PARTY DEFENDANT	)	

ORDER

On May 24, 2011, several Rural Local Exchange Carriers<sup>1</sup> filed a formal complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T").

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<sup>1</sup> Ballard Rural Telephone Cooperative Corporation, Inc., Brandenburg Telephone Company, Duo County Telephone Cooperative Corporation, Inc., Foothills Rural Telephone Cooperative, Inc., Gearhart Communications Co., Inc., Highland Telephone Cooperative, Inc., Logan Telephone Cooperative, Inc., Mountain Rural Telephone Cooperative Corporation, Inc., North Central Telephone Cooperative, Inc., Peoples Rural Telephone Cooperative Corporation, Inc., South Central Rural Telephone Cooperative Corporation, Inc., Thacker-Grigsby Telephone Company, Inc., and West Kentucky Rural Telephone Cooperative Corporation, Inc. (collectively the "RLECs").

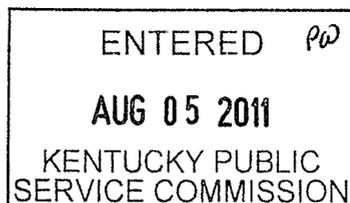
AT&T was ordered to satisfy or answer the matters in the complaint. AT&T filed its answer on July 15, 2011. On July 19, 2011, AT&T filed a motion for leave to file a third-party complaint against Halo Wireless, Inc. ("Halo"), a copy of which is attached to this Order. AT&T alleges in the motion that Halo is responsible to the RLECs for the claims that the RLECs have filed against AT&T.

The delivery of Halo's traffic to the RLECs is the center issue in the RLECs' complaint. It is clear that Halo's participation in this matter is necessary. Therefore, the Commission finds that AT&T's motion for leave to file a third-party complaint should be granted and Halo named a third-party defendant to the case.

IT IS HEREBY ORDERED that:

1. Halo is to satisfy the matters complained of or file a written answer to the third-party complaint within 10 days of the date of service of this Order.
2. All parties shall attend an informal conference that will be held on August 17, 2011 at 10:00 a.m., Eastern Daylight Time, at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

By the Commission



ATTEST:

  
Executive Director



Mary K. Keyer  
General Attorney  
Kentucky Legal Department

AT&T Kentucky  
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July 18, 2011

RECEIVED

JUL 19 2011

PUBLIC SERVICE  
COMMISSION

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

Re: Ballard Rural Telephone Cooperative Corporation, Inc., et al.,  
Complainants v. BellSouth Telecommunications, LLC, d/b/a AT&T  
Kentucky, Defendant  
PSC 2011-00199

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of AT&T Kentucky's Motion for Leave to File Third Party Complaint and Third Party Complaint. The Exhibits to the Third Party Complaint are voluminous. Therefore, AT&T is filing one paper copy and 10 CD's of the Exhibits with the Commission. A CD of the Exhibits is also being provided to the Party of Record in this case.

Please let me know if you have any questions.

Sincerely,

  
Mary K. Keyer

Enclosures

cc: Party of Record

926393

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:	)	
	)	
BALLARD RURAL TELEPHONE	)	
COOPERATIVE CORPORATION, INC.; ET AL.	)	
	)	CASE NO.
COMPLAINANTS	)	2011-00199
	)	
v.	)	
	)	
BELLSOUTH TELECOMMUNICATIONS, LLC	)	
D/B/A AT&T KENTUCKY	)	
	)	
DEFENDANT	)	

**AT&T KENTUCKY'S MOTION FOR  
LEAVE TO FILE THIRD PARTY COMPLAINT**

BellSouth Telecommunications, LLC d/b/a AT&T Kentucky ("AT&T Kentucky"), pursuant to CR 14.01 of the Kentucky Rules of Civil Procedure, hereby moves the Public Service Commission of Kentucky for leave to file a Third Party Complaint. As grounds for its motion, AT&T Kentucky states:

1. Complainants Ballard Rural Telephone Cooperative Corporation, Inc.; Brandenburg Telephone Company; Duo County Telephone Cooperative Corporation, Inc.; Foothills Rural Telephone Cooperative, Inc.; Gearheart Communications Co., Inc.; Highland Telephone Cooperative, Inc.; Logan Telephone Cooperative, Inc.; Mountain Rural Telephone Cooperative Corporation, Inc.; North Central Telephone Cooperative Corporation; Peoples Rural Telephone Cooperative, Inc.; South Central Rural Telephone Cooperative Corporation, Inc.; Thacker-Grigsby Telephone Company, Inc.; and West

Kentucky Rural Telephone Cooperative Corporation, Inc. (collectively, "RLECs") filed a complaint on May 24, 2011, against AT&T Kentucky for compensation allegedly due for traffic sent by Halo Wireless, Inc. ("Halo") to AT&T Kentucky and terminated to the RLECs.

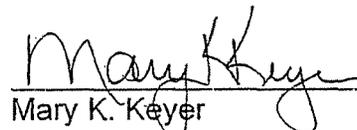
2. AT&T Kentucky denies that it is responsible to the RLECs for compensation for the termination of the Halo traffic to the extent such traffic is not intrastate intraLATA toll traffic as defined in and covered by the Kentucky Restructured Settlement Plan ("KRSP"), and that Halo is the party directly responsible for compensating the RLECs for termination of such traffic.

3. Halo is a necessary party to this case under CR 19.01 in order for complete relief to be accorded between the RLECs and AT&T Kentucky and, therefore, should be made a party to the case.

4. A copy of AT&T Kentucky's proposed Third Party Complaint is attached hereto as **Attachment 1**.

WHEREFORE, BellSouth Telecommunications, LLC d/b/a AT&T Kentucky respectfully requests the Commission to grant it leave to file the attached Third Party Complaint.

Respectfully submitted,



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Mayer Brown LLP  
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COUNSEL FOR BELLSOUTH  
TELECOMMUNICATIONS, LLC  
D/B/A AT&T KENTUCKY

926392

# **Attachment 1**

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:	)	
	)	
BALLARD RURAL TELEPHONE	)	
COOPERATIVE CORPORATION, INC.; ET AL.	)	
	)	CASE NO.
COMPLAINANTS	)	2011-00199
	)	
v.	)	
	)	
BELLSOUTH TELECOMMUNICATIONS, LLC	)	
D/B/A AT&T KENTUCKY	)	
	)	
DEFENDANT	)	
	)	
AND	)	
	)	
	)	
BELLSOUTH TELECOMMUNICATIONS, LLC	)	
D/B/A AT&T KENTUCKY	)	
	)	
THIRD PARTY COMPLAINANT	)	
	)	
v.	)	
	)	
HALO WIRELESS, INC.	)	
	)	
THIRD PARTY DEFENDANT	)	

**THIRD PARTY COMPLAINT**

BellSouth Telecommunications, LLC d/b/a AT&T Kentucky ("AT&T Kentucky"), by counsel, for its complaint against third party defendant Halo Wireless, Inc. ("Halo") hereby states as follows:

1. AT&T Kentucky is a Georgia limited liability company with its principal office and place of business in Atlanta, Georgia, and is authorized to provide telecommunications services in the Commonwealth of Kentucky.

2. Halo Wireless, Inc., is a Texas corporation with its principal place of business at 2351 West Northwest Highway, Suite 1204, Dallas, Texas 75220. Halo is listed on the Kentucky Public Service Commission's ("Commission") website as a cellular company in Kentucky.

3. Complainants Ballard Rural Telephone Cooperative Corporation, Inc.; Brandenburg Telephone Company; Duo County Telephone Cooperative Corporation, Inc.; Foothills Rural Telephone Cooperative, Inc.; Gearheart Communications Co., Inc.; Highland Telephone Cooperative, Inc.; Logan Telephone Cooperative, Inc.; Mountain Rural Telephone Cooperative Corporation, Inc.; North Central Telephone Cooperative Corporation; Peoples Rural Telephone Cooperative, Inc.; South Central Rural Telephone Cooperative Corporation, Inc.; Thacker-Grigsby Telephone Company, Inc.; and West Kentucky Rural Telephone Cooperative Corporation, Inc. (collectively, "RLECs") filed a complaint on May 24, 2011, against AT&T Kentucky ("RLECs' Complaint") concerning traffic sent by Halo to AT&T Kentucky and alleging that AT&T Kentucky must compensate the RLECs for such traffic. A copy of the Complaint is attached hereto as **Exhibit 1**.

4. For the reasons stated herein, Halo, not AT&T Kentucky, is responsible for compensating the RLECs to the extent the traffic at issue in this case is not intrastate intraLATA toll traffic subject to and covered by the Kentucky Restructured Settlement Plan ("KRSP") entered into between the RLECs and AT&T Kentucky, and, therefore,

complete relief cannot be accorded between the RLECs and AT&T Kentucky in the absence of Halo being a party.

## I. STATEMENT OF FACTS

### A. Halo-AT&T Kentucky Wireless Interconnection Agreement

5. On March 29, 2010, and April 5, 2010, respectively, Halo and AT&T Kentucky executed an MFN Agreement dated March 25, 2010, in which Halo adopted the “251/252 wireless interconnection agreement, in its entirety,” as executed between AT&T Kentucky and T-Mobile USA, Inc., and dated May 8, 2003 (“Wireless ICA” or “ICA”). A copy of the Parties’ ICA as amended is attached as Exhibit A to the RLECs’ Complaint attached hereto as Exhibit 1.

6. Pursuant to the Wireless ICA, Halo is authorized to send only commercial mobile radio service (“CMRS”) traffic to AT&T Kentucky for termination or transiting to other carriers. See, e.g., Section II, “Purpose,” that states:

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its execution, including, without limitation, the Act at Sections 251, 252 and 271. The access and interconnection obligations contained herein enable Carrier [Halo] to provide CMRS in those areas where it is authorized to provide such services within the nine state region of BellSouth. (Emphasis added.)

7. At the same time the Parties executed the Wireless ICA, they also executed an amendment to that document in which the Parties agreed that the Wireless ICA

will apply only to (1) traffic that originates on AT&T’s network or is transited through AT&T’s network and is routed to [Halo’s] wireless network for wireless termination by [Halo]; and (2) traffic that *originates through wireless transmitting and receiving facilities* before [Halo] delivers traffic to AT&T for termination by AT&T or for transit to another network.

See Exhibit 2, Amendment – Whereas Clause, ¶ 1 (emphasis added).

## B. Kentucky Restructured Settlement Plan ("KRSP")

8. Effective January 1, 1985, AT&T Kentucky and the RLECs entered into an agreement setting forth the terms and conditions for the provision and exchange of intraLATA switched toll services. See Annex 1, IntraLATA Switched Toll Services Annex (BI 3), p. 1, attached hereto as **Exhibit 2**. By definition, "intraLATA switched toll services" are "IntraLATA Message Telecommunications Services (MTS), . . . , which are furnished *within LATAs* in which both the Bell Company [AT&T Kentucky] and the Independent Company [RLEC] operate in whole or in part by the system of the [RLEC] and by the system of [AT&T Kentucky] and are *furnished exclusively by exchange carriers under uniform toll tariffs*." *Id.*, Sec. I (emphasis added). MTS is further defined in Section II of the Annex as including "the facilities used and services rendered in furnishing telephone toll service communications between customer premises in different exchange areas *within a LATA*, in accordance with the schedules of charges, regulation and conditions stated in the uniform statewide intraLATA exchange carrier toll tariff(s)." (Emphasis added.)

9. Effective March 3, 1992, AT&T Kentucky and the RLECs entered into a new arrangement, known as the Kentucky Restructured Settlement Plan ("KRSP"), to reflect changes required as a result of the Commission's May 6, 1991, Order in Administrative Case No. 323. See Exhibit C, Basis of Compensation, IntraLATA Switched Toll Services Annex (BI-3C), attached hereto as part of Exhibit 3. Compensation for the handling of intrastate intraLATA switched toll services, as defined in the Annex, is set forth in Exhibit C. *Id.* at 2-4, Sec. A.

10. To the extent the traffic at issue in the RLECs' Complaint is not intrastate intraLATA switched toll traffic, as defined in and provided for by the KRSP or in a similar agreement with another carrier, Halo, and not AT&T Kentucky, is responsible for compensating the RLECs for such traffic.

### **C. Halo Traffic**

11. In or around December 2010, Halo began sending to AT&T Kentucky what Halo purported to be CMRS traffic for termination to other carriers pursuant to the Wireless ICA. AT&T Kentucky delivered that traffic for termination to other carriers, including the RLECs (hereinafter, "Halo traffic"). This Halo traffic is the subject matter of the RLECs' Complaint.

12. AT&T Kentucky's analysis of the Halo traffic, however, indicates that the large majority of the traffic that Halo sends to AT&T Kentucky is not CMRS traffic, but rather is wireline-originated interstate, intrastate interLATA, or intraLATA toll traffic for which AT&T Kentucky has no obligation to compensate the RLECs. Halo's transmission of such wireline-originated traffic to AT&T violates the Parties' Wireless ICA.

13. To the extent Halo's traffic is wireless-originated CMRS traffic, Halo, not AT&T Kentucky, must compensate the RLECs for terminating that traffic. See *RLECs' Complaint*, ¶ 15.

14. To the extent Halo's traffic is either wireline-originated interstate or intrastate interLATA toll traffic, Halo, not AT&T Kentucky, is responsible for compensating the RLECs in accordance with the RLECs' appropriate access tariffs.

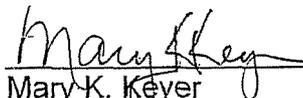
15. To the extent Halo's wireline-originated intrastate intraLATA toll traffic is not intrastate intraLATA toll traffic as defined in and covered by the KRSP or another similar agreement with another carrier, Halo, not AT&T Kentucky, is responsible for compensating the RLECs in accordance with the RLECs' appropriate access tariffs.<sup>1</sup>

**RELIEF REQUESTED**

WHEREFORE, BellSouth Telecommunications, LLC d/b/a AT&T Kentucky, respectfully requests that the Commission:

- a. expedite the processing of this case,
- b. schedule an informal conference as quickly as possible,
- c. find that, to the extent the Halo traffic is not wireline-originated intrastate intraLATA toll traffic as defined in and covered by the KRSP, Halo, and not AT&T Kentucky, is responsible for compensating the RLECs for the termination of such traffic, and
- d. grant any and all other relief to which AT&T Kentucky may otherwise be entitled.

Respectfully submitted,



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<sup>1</sup> To the extent any of Halo's traffic is wireline-originated intraLATA toll traffic as defined in and covered by the KRSP, AT&T Kentucky is not alleging that Halo must compensate the RLECs for that traffic. Halo's transmission of such wireline-originated traffic to AT&T, however, would violate the Wireless ICA.

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jcovey@mayerbrown.com

COUNSEL FOR BELLSOUTH  
TELECOMMUNICATIONS, LLC  
D/B/A AT&T KENTUCKY

926391

# Exhibit 1

**Dinsmore & Shohl** LLP  
ATTORNEYS

John E. Selent  
502-540-2315  
john.selent@dinslaw.com

May 24, 2011

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MAY 24 2011

PUBLIC SERVICE  
COMMISSION

**VIA HAND DELIVERY**

Hon. Jeff Derouen  
Executive Director  
Public Service Commission  
of the Commonwealth of Kentucky  
211 Sower Blvd.  
Frankfort, KY 40601

*Re: In the Matter of Ballard Rural Telephone Cooperative Corporation, Inc.;  
Brandenburg Telephone Company; Duo County Telephone Cooperative Corporation, Inc.;  
Foothills Rural Telephone Cooperative, Inc.; Gearheart Communications Co., Inc.;  
Highland Telephone Cooperative Inc.; Logan Telephone Cooperative, Inc.; Mountain  
Rural Telephone Cooperative Corporation, Inc.; North Central Telephone Cooperative  
Corporation; Peoples Rural Telephone Cooperative, Inc.; South Central Rural Telephone  
Cooperative Corporation, Inc.; Thacker-Grigsby Telephone Company, Inc.; and West  
Kentucky Rural Telephone Cooperative Corporation, Inc. v. BellSouth  
Telecommunications, Inc. d/b/a A&T Kentucky*

Dear Mr. Derouen:

We represent the above-referenced rural local exchange carriers ("RLECs").

Enclosed for filing in this matter, please find

- (1) one original and eleven (11) copies of the RLECs' Formal Complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"); and
- (2) one original and one copy of the RLECs' Petition for Confidential Treatment which includes (i) one copy of the material for which confidentiality is being sought that identifies the confidential material by highlighting; and (ii) eleven (11) copies of the material where the confidential portions are redacted.

Hon. Jeff Derouen  
May 24, 2011  
Page 2

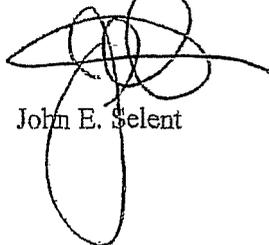
Please be advised that the RLECs have not served a copy of the Petition for Confidential Treatment on AT&T Kentucky because the Public Service Commission of the Commonwealth of Kentucky (the "Commission") has not yet established a case in this matter. If it pleases the Commission, the RLECs will serve a copy of the Petition for Confidential Treatment on AT&T Kentucky at such time as the Commission establishes a case in this matter and orders AT&T Kentucky to answer or satisfy the RLECs' Formal Complaint.

Please file-stamp one copy of each of the items listed above, and return it to our delivery person.

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP

A handwritten signature in black ink, appearing to read "John E. Selent", is written over the typed name. The signature is stylized with several loops and a long horizontal stroke extending to the right.

John E. Selent

JES/sdt

Enclosures

cc: Edward T. Depp, Esq.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Ballard Rural Telephone Cooperative )  
Corporation, Inc.; Brandenburg Telephone )  
Company; Duo County Telephone Cooperative )  
Corporation, Inc.; Foothills Rural Telephone )  
Cooperative, Inc.; Gearheart Communications )  
Co., Inc.; Highland Telephone Cooperative )  
Inc.; Logan Telephone Cooperative, Inc.; )  
Mountain Rural Telephone Cooperative )  
Corporation, Inc.; North Central Telephone )  
Cooperative Corporation; Peoples Rural )  
Telephone Cooperative, Inc.; South Central )  
Rural Telephone Cooperative Corporation, Inc.; )  
Thacker-Grigsby Telephone Company, Inc.; )  
and West Kentucky Rural Telephone )  
Cooperative Corporation, Inc. )

Complainants )

v. )

BellSouth Telecommunications, Inc. d/b/a )  
AT&T Kentucky )

Defendant )

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MAY 24 2011

PUBLIC SERVICE  
COMMISSION

Case No. \_\_\_\_\_

**PETITION FOR CONFIDENTIAL TREATMENT OF THE DATA  
CONTAINED IN THE RLECS' FORMAL COMPLAINT**

The RLECs<sup>1</sup>, by counsel, and pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(c),  
move the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to  
accord confidential treatment to the highlighted information (the "Information") contained in ¶¶

<sup>1</sup> Ballard Rural Telephone Cooperative Corporation, Inc., Brandenburg Telephone Company, Duo County Telephone Cooperative Corporation, Inc., Foothills Rural Telephone Cooperative, Inc., Gearhart Communications Co., Inc., Highland Telephone Cooperative, Inc., Logan Telephone Cooperative, Inc., Mountain Rural Telephone Cooperative, Inc., North Central Telephone Cooperative Corporation, Peoples Rural Telephone Cooperative, Inc., South Central Rural Telephone Cooperative Corporation, Inc., Thacker-Grigsby Telephone Company, Inc., and West Kentucky Rural Telephone Cooperative Corporation, Inc. (collectively the "RLECs").

24-36 of the RLECs' Formal Complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"). The Information highlighted specifies the total amount AT&T Kentucky owes the RLECs for unpaid switched access services. In support of their Petition, the RLECs state as follows.

**I. Applicable Law.**

807 KAR 5:001 §7(2) sets forth a procedure by which certain information filed with the Commission may be treated as confidential. Specifically, the party seeking confidential treatment of certain information must "[set] forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential." 807 KAR 5:001 §7(2)(a)(1).

The Kentucky Open Records Act, KRS 61.870 *et seq.*, exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878 provides as follows:

- (1) The following public records are excluded from the application of [the Open Records Act] and shall be subject to inspection only upon order of a court of competent jurisdiction:
  - (c) 1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.

*Id.*

**II. The Financial Information Should Be Classified Confidential.**

Read in conjunction, 807 KAR 5:001 §7(2)(a)(1) and KRS 61.878(1)(c) provide that the Commission may classify the Information as confidential if the open disclosure of the

Information to the general public "would permit an unfair commercial advantage to competitors of the entity that disclosed the records." *See* KRS 61.878(1)(c)(1). For the reasons set forth below, the disclosure of the Information to the general public could "permit an unfair commercial advantage to competitors of [AT&T Kentucky]." *Id.* Accordingly, the Information should be classified as confidential.

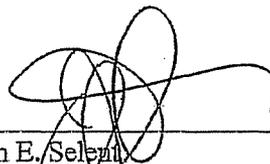
In ¶¶ 24-36 of the RLECs' Formal Complaint, the RLECs specify the total amount AT&T Kentucky owes the RLECs for unpaid switched access services. Although the RLECs do not know whether AT&T Kentucky considers the Information confidential, it believes that the disclosure of the Information to the general public could permit an unfair commercial advantage to AT&T Kentucky's competitors. Accordingly, out of an abundance of caution, believing that the information contained in ¶¶ 24-36 of the RLECs' Formal Complaint may be potentially sensitive to AT&T Kentucky, the RLECs request that the Information be treated as confidential. The disclosure of this Information to the public may provide AT&T Kentucky's competitors and potential competitors with potentially confidential information regarding AT&T Kentucky's monthly access expenses. Competitors could then potentially exploit that information and gain an unfair competitive advantage. If, however, the Commission classifies the Information as confidential, AT&T Kentucky's competitors will not gain unfair access to this potentially sensitive, confidential information related to AT&T Kentucky's monthly access expenses.

### **III. Conclusion.**

807 KAR 5:001 §7(2)(a)(1) and KRS 61.878(1)(c)(1) expressly authorize the Commission to classify the Information as confidential (and thereby restrict public access to the Information) because the disclosure of the Information to the public may permit an unfair competitive advantage to competitors of AT&T Kentucky. For the reasons set forth above, the

disclosure of the Information could provide AT&T Kentucky's competitors with an unfair competitive advantage over AT&T Kentucky. Accordingly, the Commission should classify the Information as confidential pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(c)(1) and prevent the public disclosure of the Information.

Respectfully submitted,



---

John E. Selem  
Edward T. Depp  
Stephen D. Thompson  
**DINSMORE & SHOHL LLP**  
101 South Fifth Street  
2500 National City Tower  
Louisville, Kentucky 40202  
(502) 540-2300 (Telephone)  
(502) 585-2207 (Facsimile)  
*Counsel to the RLECs*

852415v1

REDACTED

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Ballard Rural Telephone Cooperative Corporation, Inc.; Brandenburg Telephone Company; Duo County Telephone Cooperative Corporation, Inc.; Foothills Rural Telephone Cooperative, Inc.; Gearheart Communications Co., Inc.; Highland Telephone Cooperative Inc.; Logan Telephone Cooperative, Inc.; Mountain Rural Telephone Cooperative Corporation, Inc.; North Central Telephone Cooperative Corporation; Peoples Rural Telephone Cooperative, Inc.; South Central Rural Telephone Cooperative Corporation, Inc.; Thacker-Grigsby Telephone Company, Inc.; and West Kentucky Rural Telephone Cooperative Corporation, Inc.

Complainants

v.

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky

Defendant

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MAY 24 2011

PUBLIC SERVICE  
COMMISSION

Case No. \_\_\_\_\_

FORMAL COMPLAINT

Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural"), Brandenburg Telephone Company ("Brandenburg"), Duo County Telephone Cooperative Corporation, Inc. ("Duo County"), Foothills Rural Telephone Cooperative, Inc. ("Foothills"), Gearheart Communications Co., Inc. ("Gearheart"), Highland Telephone Cooperative, Inc. ("Highland"), Logan Telephone Cooperative, Inc. ("Logan Telephone"), Mountain Rural Telephone Cooperative Corporation, Inc. ("Mountain Rural"), North Central Telephone Cooperative Corporation ("North Central"), Peoples Rural Telephone Cooperative, Inc. ("Peoples"), South

Central Rural Telephone Cooperative Corporation, Inc. ("South Central"), Thacker-Grigsby Telephone Company, Inc. ("Thacker-Grigsby"), and West Kentucky Rural Telephone Cooperative Corporation, Inc. ("West Kentucky") (collectively, the "RLECs"), by counsel, for their formal complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"), pursuant to KRS 278.030, 278.040, 278.260, 278.280, 807 KAR 5:001 and KAR 5:006, and the Communications Act of 1934, as amended by the Telecommunications Act of 1996, hereby state as follows.

1. The full names and addresses of the RLECs are as follows.

a. The full name and address of Ballard is Ballard Rural Telephone Cooperative Corporation, Inc., 159 West Second Street, P.O. Box 209, La Center, Kentucky 42056. Ballard Rural is a rural incumbent local exchange carrier authorized to provide telecommunications services in the Commonwealth of Kentucky. Ballard Rural is a Kentucky corporation.

b. The full name and address of Brandenburg Telephone is Brandenburg Telephone Company, 200 Telco Dr., P.O. Box 599, Brandenburg, Kentucky 40108. Brandenburg Telephone is a rural incumbent local exchange carrier authorized to provide telecommunications services in the Commonwealth of Kentucky. Brandenburg Telephone is a Kentucky corporation.

c. The full name and address of Duo County is Duo County Telephone Cooperative Corporation, Inc., P.O. Box 80, 2150 N. Main Street, Jamestown KY 42629. Duo County is a rural incumbent local exchange carrier authorized to provide telecommunications services in the Commonwealth of Kentucky. Duo County is a Kentucky corporation.

d. The full name and address of Foothills is Foothills Rural Telephone Cooperative, Corporation, Inc., 1621 KY Hwy. 40 W., Staffordsville, Kentucky 41256. Foothills is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. Foothills is a Kentucky corporation.

e. The full name and address of Gearheart is Gearheart Communications Company, Inc., 20 Laynesville Rd., Harold, Kentucky 41635. Gearheart is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. Gearheart is a Kentucky corporation.

f. The full name and address of Highland is Highland Telephone Cooperative, Inc., P.O. Box 119, Sunbright Tennessee 27872. Highland is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. Highland is a foreign corporation. Highland subtends a Windstream tandem.

g. The full name and address of Logan Telephone is Logan Telephone Cooperative, Inc., 10725 Bowling Green Rd., Auburn, Kentucky 42206. Logan Telephone is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. Logan Telephone is a Kentucky corporation.

h. The full name and address of Mountain Rural is Mountain Rural Telephone Cooperative Corporation, Inc., 405 Main Street, P.O. Box 399, West Liberty Kentucky 41472. Mountain Rural is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. Mountain Rural is a Kentucky corporation.

i. The full name and address of North Central is North Central Telephone Cooperative Corporation, P.O. Box 70, 872 Highway 52 Bypass East, Lafayette, Tennessee

37083. North Central is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. North Central is a foreign corporation.

j. The full name and address of Peoples is Peoples Rural Telephone Cooperative Corporation, Inc., Hwy. 421 South, P.O. Box 159, McKee, Kentucky 40447. Peoples is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. Peoples is a Kentucky corporation.

k. The full name and address of South Central is South Central Rural Telephone Cooperative Corporation, Inc., 1399 Happy Valley Road, Glasgow, Kentucky 42141. South Central is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. South Central is a Kentucky corporation.

l. The full name and address of Thacker-Grigsby is Thacker-Grigsby Telephone Company, Inc., 60 Communications Lane, P.O. Box 789, Hindman, Kentucky 41822. Thacker-Grigsby is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. Thacker-Grigsby is a Kentucky corporation.

m. The full name and address of West Kentucky is West Kentucky Rural Telephone Cooperative Corporation, Inc., P.O. Box 649, Mayfield KY 42066. West Kentucky is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. West Kentucky is a Kentucky corporation.

2. The full name and address of AT&T Kentucky is BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky, 675 W. Peachtree Street, N.E., Suite 4514, Atlanta, Georgia 30375.

AT&T Kentucky is an incumbent local exchange carrier authorized to provide telecommunications services in the Commonwealth of Kentucky. AT&T Kentucky is a foreign corporation.

3. The facts supporting this complaint are set forth more fully below; but briefly, this complaint concerns AT&T Kentucky's refusal to compensate the RLECs for access traffic that it delivers to the RLECs' respective networks for termination.

#### APPLICABLE LAW

4. KRS 278.040 vests the Commission with exclusive jurisdiction "over the regulation of rates and service of utilities" within the Commonwealth.

5. KRS 278.260 further vests the Commission with original jurisdiction over any "complaint as to [the] rates or service of any utility" and empowers the Commission to investigate and remedy such complaints.

6. As a utility subject to the jurisdiction of the Commission, AT&T Kentucky must engage in "just, reasonable, safe, proper, adequate, [and] sufficient" practices. KRS 278.280(1).

7. Similarly, Kentucky law permits the RLECs to "establish reasonable rules governing the conduct of [their] business[es] and the conditions under which [they] shall be required to render service." KRS 278.030(2). The RLECs may also "employ in the conduct of [their] business[es] suitable and reasonable classifications of [their] service ... [that] take into account the nature of the use ... the quantity used ... the purpose for which used, and any other reasonable consideration." KRS 278.030(3).

8. Pursuant to 807 KAR 5:006(14)(1)(a), (e), (f), and (g) the RLECs "may refuse or terminate service to" AT&T Kentucky for: (i) "noncompliance with the utility's tariffed rules or

commission administrative regulations;" (ii) "noncompliance with state, local or other codes;" (iii) "nonpayment of bills;" and/or (iv) "illegal use or theft of service."

#### STATEMENT OF FACTS

9. AT&T Kentucky is delivering access traffic to the RLECs from third-party telecommunications carriers without compensating the RLECs accordingly for access services.

10. Specifically, AT&T Kentucky has engaged in a practice that allows third-party carriers to opt-into existing interconnection agreements ("ICA") whereby AT&T Kentucky agrees to act as an intermediary for the delivery of traffic to other carriers. As the intermediary, AT&T Kentucky secures for itself the right to reimbursement from the third-party for any charges it incurs in terminating the traffic to other carriers. AT&T Kentucky then terminates this traffic to the other carriers (here, the RLECs) over access trunk groups.

11. Sometime in or around December of 2010, AT&T Kentucky began delivering third-party traffic from a company named Halo Wireless, Inc. ("Halo") to the RLECs' respective networks for termination. AT&T Kentucky presumably did so pursuant to an ICA that Halo opted-into with AT&T Kentucky on March 29, 2010 and filed with the Commission on April 20, 2010. (See "Wireless Adoption Agreement" between AT&T Kentucky and Halo attached as Exhibit A.) AT&T Kentucky continues to deliver this traffic to the RLECs' networks to this day.<sup>1</sup>

12. Despite its misleading name, Halo is not a wireless carrier that provides service to wireless end-users in the state of Kentucky. Halo, instead, appears to be acting in this case like a wholesale provider of access traffic termination services. Several of the RLECs have informed AT&T Kentucky of this, and AT&T Kentucky has acknowledged that it shares this concern.

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<sup>1</sup> And, while the Halo traffic specifically referenced herein is a significant, known problem with AT&T's ongoing practices, the RLECs note that this is likely but one example of AT&T's pattern of conduct.

13. Yet, when the RLECs seek compensation from AT&T Kentucky for terminating this access traffic on their networks, AT&T Kentucky claims: (i) that the traffic is CMRS traffic and, therefore, that it should not be billed for it under the terms of the Kentucky Restructured Settlement Plan (the "KRSP"); and/or (ii) that it is the RLECs responsibility to seek compensation directly from Halo. Neither claim is accurate.

14. As an initial matter, Halo had to establish connections with AT&T Kentucky. As a result, AT&T Kentucky should have been aware that the volume of "transit traffic" that it would receive from Halo would be substantial. Despite knowing this, AT&T Kentucky failed to provide any advance notice to the RLECs regarding the type or volume of traffic AT&T Kentucky would be delivering to them from Halo.

15. Under the now-expired KRSP, the RLECs had agreed to give AT&T Kentucky credit for actual CMRS traffic that it delivered to the RLECs' networks. (See "Kentucky Restructured Settlement Plan" attached as Exhibit B.) Though the KRSP expired by its own terms on December 31, 2006, the RLECs, as a course of practice, have continued to give AT&T Kentucky credit for CMRS traffic where AT&T Kentucky's call detail records provide evidence that such traffic is, in fact, CMRS traffic. Where the traffic is not CMRS traffic, AT&T Kentucky must compensate the RLECs for providing access services at the tariffed rate.

16. The Halo traffic is not CMRS traffic. The call detail records provided by AT&T Kentucky to the RLECs were matched with the RLECs own switch records to confirm this conclusion.<sup>2</sup> For example, in at least one instance, the RLECs were able to confirm that a Halo call delivered to the RLECs by AT&T Kentucky originated from a cable company wireline phone subscriber in Virginia.

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<sup>2</sup> The RLECs were forced to use their own switch records and could not rely on call detail provided by AT&T Kentucky because those records lacked any data that might otherwise be of use in ascertaining the true source of these so-called wireless calls.

17. Because this traffic is not wireless traffic, the RLECs have not provided AT&T Kentucky credit for this traffic on their invoices to AT&T Kentucky. AT&T Kentucky, however – and even while acknowledging that it shares the concern that the Halo traffic it delivers is not CMRS traffic -- has refused to compensate the RLECs for this traffic by withholding payment in direct contravention of the RLECs' access tariffs. AT&T Kentucky continues to unjustly withhold payment of, or otherwise dispute, these tariffed charges to this day.

18. AT&T Kentucky has refused to compensate the RLECs even though it has, itself, acknowledged “concerns about this traffic” and “concerns with Halo.” (See May 6, 2011 Email from AT&T Kentucky to Ballard Rural Regarding “Ballard April 2011 CABS Access Invoice” attached as Exhibit C.; see also March 25, 2011 Email from AT&T Kentucky to Brandenburg Telephone Regarding “New Meet Point Wireless Carrier – Halo Wireless (OCN 429F) in Kentucky” attached as Exhibit D.)

19. Despite its recognition that the Halo traffic is cause for concern, however, AT&T Kentucky’s response has been to assume, despite evidence to the contrary, that the Halo traffic it delivers to the RLECs is CMRS traffic simply because it does so pursuant to a “Wireless Adoption Agreement” – the ICA – that it allowed Halo to adopt. AT&T Kentucky continues to deliver this traffic to the RLECs and demand credit for the minutes of use under the inaccurate claim that the Halo traffic is CMRS traffic.

20. When the RLECs contacted AT&T Kentucky in an effort to resolve the dispute, AT&T Kentucky directed the RLECs to Halo as the proper party for the RLECs to pursue for compensation.<sup>3</sup>

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<sup>3</sup> At least two RLECs have attempted to contact Halo directly regarding the traffic it is transiting via AT&T Kentucky’s network in an effort to execute an ICA. (See March 28, 2011 Letter from Brandenburg Telephone to Halo attached as Exhibit E; see also April 21, 2011 Letter from South Central to Halo Attached as Exhibit F.) Unfortunately, Halo has, to date, refused to negotiate an ICA in good faith. (See March 31, 2011 Letter from Halo

21. However, the ICA between AT&T Kentucky and Halo provides just the opposite. Pursuant to Section VII., Paragraph C. of the ICA between AT&T Kentucky and Halo, AT&T Kentucky is to pass on to Halo "any charges that [AT&T Kentucky] may be obligated to pay to the Third Party Carrier" – in this case the RLECs. (See "Wireless Adoption Agreement" between AT&T Kentucky and Halo attached as Exhibit A.) In fact, the traffic percentages included in the ICA anticipate that this very type of "Non-Local Intermediary Plus Cost Traffic" will occur. (See *id.* at Section VII., Paragraph E.)

22. Section VII., Paragraph C. of the ICA also provides that Halo is required to compensate AT&T Kentucky \$0.002 per minute to deliver this traffic to the RLECs' networks. (See *id.* at Section VII., Paragraph C.)

23. Thus, pursuant to the ICA between AT&T Kentucky and Halo, AT&T Kentucky has the contractual right both to receive compensation from Halo for transiting the traffic in question and to pass on to Halo any access charges AT&T Kentucky is required to pay the RLECs for termination.

24. To date, AT&T Kentucky owes \$ [REDACTED] in access charges to Ballard Rural for this access traffic.

25. To date, AT&T Kentucky owes \$ [REDACTED] in access charges to Brandenburg Telephone for this access traffic.

26. To date, AT&T Kentucky owes \$ [REDACTED] in access charges to Duo County for this access traffic.

27. To date, AT&T Kentucky owes \$ [REDACTED] in access charges to Foothills for this access traffic.

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to Brandenburg Telephone attached as Exhibit G; see also May 3, 2011 Letter from Halo to South Central attached as Exhibit H).

28. To date, AT&T Kentucky owes approximately \$ [REDACTED] in access charges to Gearheart for this access traffic.

29. To date, AT&T Kentucky owes \$ [REDACTED] in access charges to Highland for this access traffic.

30. To date, AT&T Kentucky owes \$ [REDACTED] in access charges to Logan Telephone for this access traffic.

31. To date, AT&T Kentucky owes \$ [REDACTED] in access charges to Mountain Rural for this access traffic.

32. To date, AT&T Kentucky owes \$ [REDACTED] in access charges to North Central for this access traffic.

33. To date, AT&T Kentucky owes \$ [REDACTED] in access charges to Peoples for this access traffic.

34. To date, AT&T Kentucky owes \$ [REDACTED] in access charges to South Central for this access traffic.

35. To date, AT&T Kentucky owes \$ [REDACTED] in access charges to Thacker-Grigsby for this access traffic.

36. To date, AT&T Kentucky owes \$ [REDACTED] in access charges to West Kentucky for this access traffic.

37. All totaled, and for only three months of Halo traffic delivered by AT&T Kentucky, this is rapidly approaching a million dollar issue; and the amount is increasing at an alarming rate.

38. In sum, AT&T Kentucky is dumping access traffic on the RLECs without paying for it. It then tries to hide behind the fig leaf of an agreement that knowingly mischaracterizes

the traffic as CMRS traffic, all the while ignoring the provisions in that same ICA that would permit it to be reimbursed by Halo for the access charges AT&T Kentucky owes to the terminating RLECs. All the while, AT&T Kentucky is getting paid to do this at a rate of \$0.002 per minute. (See at Section VII., Paragraph C. of "Wireless Adoption Agreement" between AT&T Kentucky and Halo attached as Exhibit A.)

39. AT&T Kentucky should not be allowed to dump this traffic on the RLECs without compensating the RLECs for the access services they provide in terminating that traffic. This is especially true where, as here, AT&T Kentucky receives compensation from the third-party carriers for delivering this traffic and, moreover, has the contractual right to pass the RLECs' access charges on to the third-party carrier.

40. AT&T Kentucky should, therefore, be required to pay the RLECs at their tariffed access rates for the Halo-originated traffic the RLECs are being forced to terminate.

**WHEREFORE**, the RLECs respectfully request that the Commission take the following actions.

A. Order AT&T Kentucky to pay the RLECs' tariffed access rates for the termination of the Halo traffic and all other third-party traffic that is not CMRS traffic;

B. In the alternative, declare that the RLECs are authorized to – consistent with applicable regulations and the terms of their tariffs – terminate service to AT&T Kentucky for refusing to pay the RLECs' tariffed rates for the termination of access traffic; and

C. Grant the RLECs any and all other legal and equitable relief to which they may be entitled.

Respectfully submitted,

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